

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-216614

DATE: March 19, 1985

MATTER OF: Times Fiber Communications, Inc.

DIGEST:

Multiple award is permissible under solicitation where solicitation language does not prohibit separate awards and tenor of solicitation does not clearly show that an aggregate award was contemplated.

Times Fiber Communications, Inc. (Times), protests the award of a contract for cables of varying lengths to Adams-Russell Co., Inc. (Adams), under request for proposals (RFP) No. N00189-84-R-0083 issued by the Department of the Navy (Navy).

The Navy awarded Times a contract for front ends of varying type for use with cables under the same RFP. Times contends that the split award was not permissible under this RFP, and that Times as the low total offeror for the items should have received an aggregate award. The Navy award of two separate contracts resulted in a total cost of \$309,554 compared to Times total offer of \$381,542.

Times alleges that the solicitation contemplated and authorized a single, aggregate award for all line items. In support of its view, Times asserts that solicitation language, including the solicitation testing requirement for demonstration of cable performance, the delivery schedule, and the military specifications (milspec) incorporated into the solicitation all show that a single award was contemplated by the Navy.

We deny the protest.

The Navy disagrees with Times interpretation of the solicitation and states that the solicitation did not preclude separate awards of the solicited items and that the split award resulted in a savings to the government. The Navy points to paragraph 10(c) of standard form 33A incorporated by reference into the RFP which permits the government to "accept any items or group of items of any offer, unless the offeror qualifies his offer by specific

limitations." The Navy further refers to another clause, which reserved to the Navy the right to make a single award. The Navy asserts that this language shows its explicit intent to retain discretion regarding the award since the clause does not require a single award. The Navy asserts that other clauses referenced by Times similarly do not preclude split awards. Finally, the Navy states, notwithstanding Times assertion to the contrary, that the milspec used in this solicitation does not require a single award. The Navy points out that the cable assemblies purchased under this solicitation are not necessarily for use with only the front ends purchased under this solicitation, and that the cable assemblies may be used with other front ends purchased under other contracts. In fact, the Navy advises that while 3,500 front ends were purchased only 1,550 cables were purchased.

Finally, the Navy states that, by amendment to the RFP, it required compatibility of the components to address the problem of interchangeability of components purchased under this RFP in the event the items were not awarded to the same firm.

The protester relies on our decision in General Aero Products Division, B-191870, July 25, 1978, 78-2 C.P.D.

¶ 70, in support of its position that, where the tenor of a solicitation indicates that an aggregate award is contemplated, an aggregate award should be made although multiple awards would result in savings to the government. We do not agree with Times that the tenor of the solicitation showed that an aggregate award was intended.

In fact, the solicitation did not expressly state that either an aggregate or split award was intended. However, we think that the more reasonable reading of the solicitation as a whole is that the Navy was permitted to make split awards if the split awards resulted in the lowest cost to the government.

The solicitation schedule broke out the two solicited items, cables and front ends, as separate line items of supply with each line item subdivided according to type of cable or front end solicited and called for prices for each line item and subdivided category. The schedule did not require a price for the total of all cables or all front ends or a total price for a combination of cables and front ends. Also, while the Navy reserved the right under the

solicitation to make a single award, there was no provision requiring that award be made in the aggregate. Defense Acquisition Regulation § 2-201(a) section L(vii), Defense Acquisition Circular No. 76-30, Sept. 30, 1981; see Engineering Research, Inc., B-188731, June 15, 1977, 77-1 C.P.D. ¶ 431.

Times also quotes the "evaluation of options" clause as support for its view that an aggregate award was required by the RFP. The provision, M105 of the RFP, provides that:

"A. Bids and proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity. Evaluation of options will not obligate the Government to exercise the option or options."

In our view, this clause essentially explains that option prices are to be added to the basic quantity price for evaluation purposes. It does not indicate that an aggregate award is contemplated. Simply, the clause would require in the case of two awards that the Navy evaluate base and option prices for each award.

Furthermore, with regard to the delivery provision, we disagree with Times contention that, because the solicitation provides one delivery schedule, this necessarily shows an intent to make an award to only one source for both items. Under this provision, we think one or more contractors would be bound to the same delivery schedule.

Times also argues that the testing requirement for items under this RFP and the milspec provisions make practical sense only if one contractor provides both the cables and the front ends and these components are tested together. Times asserts that, if they are not tested together, the Navy will be accepting front ends that may not work with the cables supplied under this RFP, which renders the testing requirement meaningless. Similarly, Times states that the milspecs for intermediate interface and compatibility contemplates only one contractor to ensure the components can perform together.

The Navy responds that the testing paragraph at issue requires that "all cable assemblies be tested with style A, Type 3 replaceable interface components." Since both companies manufacture interface components and Adams has

agreed to the RFP terms, the Navy believes this requirement will be met. Also, the Navy points out that both contractors are obligated to comply with these and all milspec requirements. In this connection, the Navy, specifically, by amendment, added a requirement for the interface of cables to be compatible with the Times front ends. Adams took no exception to this provision and the Navy is satisfied that Adams will comply with all solicitation requirements.

We find nothing in the testing or milspec which requires an aggregate award. For example, one paragraph concerning the interface requirement states that the manufacturer is responsible for interface between the cables and front ends, but does not, in our view, require a single manufacturer for all components. As the Navy suggests, the manufacturer of each of these items is responsible for ensuring compatibility with the interface components.

In our view, to the extent the issue remains, it is one of compliance and administration of the contract which this Office does not review. See Central Texas College System, B-217491, Jan. 25, 1985, 85-1 C.P.D. ¶ 102.

Finally, we note that the second sentence of the testing requirement provision states:

"After testing the cable assembly shall be packaged separately from the replaceable interface components as ordered by the procurement document."

The Navy states this requirement was not intended to preclude multiple awards, but was intended to benefit the Navy if one contractor received the award. The Navy advises that, since the front ends and cables would not necessarily be used as an assembly, it was the desire of the Navy to receive the items in separate packages.

By requiring that the components be packaged separately after testing, this language appears to presuppose that the components will be manufactured by one source which will package the items together. However, we are not prepared to conclude that this shows the Navy's intent to award to only one source. We accept the Navy's explanation that, since the items would not necessarily be used as one unit, this provision was included to ensure that the items were packaged separately after testing in the event one contractor received the award. The provision was intended to meet a

specific need for separate packaging and this need was met by the separate awards. Thus, here the provision has no effect other than to merely require something that will be accomplished by the nature of the award and, therefore, we are unable to conclude it shows that only an aggregate award was intended. While it clearly applied to an aggregate award, it does not prohibit a multiple award. Rather, it simply does not apply here.

for Seymour E. Egan
Harry R. Van Cleve
General Counsel